

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

Zohar III, Corp., *et al.*,¹

Debtors.

Chapter 11

Case No. 18-10512 (KBO)

Jointly Administered

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

LYNN TILTON; PATRIARCH PARTNERS
VIII, LLC; PATRIARCH PARTNERS XIV,
LLC; PATRIARCH PARTNERS XV, LLC;
OCTALUNA, LLC; OCTALUNA II, LLC; and
OCTALUNA III, LLC,

Appellants,

v.

MBIA INC., MBIA INSURANCE
CORPORATION, U.S. BANK, N.A.,
ALVAREZ & MARSAL ZOHAR
MANAGEMENT, CREDIT VALUE
PARTNERS, LP, BARDIN HILL
INVESTMENT PARTNERS F/K/A
HALCYON CAPITAL MANAGEMENT LP,
COÖPERATIEVE RABOBANK U.A.,
VÄRDE PARTNERS, INC., ASCENSION
ALPHA FUND LLC, ASCENSION HEALTH
MASTER PENSION TRUST, CAZ
HALCYON OFFSHORE STRATEGIC
OPPORTUNITIES FUND, L.P., CAZ
HALCYON STRATEGIC OPPORTUNITIES
FUND, L.P., BROWN UNIVERSITY, HCN

Case No. 1:22-cv-00400 (TLA)

¹ The Debtors, and, where applicable, the last four digits of each of their respective taxpayer identification numbers, are as follows: Zohar III, Corp. (9612), Zohar II 2005-1, Corp. (4059), Zohar CDO 2003-1, Corp. (3724), Zohar III, Limited (9261), Zohar II 2005-1, Limited (8297), and Zohar CDO 2003-1, Limited (5119). The Debtors' address is c/o FTI Consulting, Inc., 1166 Avenue of the Americas, 15th Floor, New York, NY 10036.

LP, HALCYON EVERSOURCE CREDIT LLC, HLF LP, HLDR FUND I NUS LP, HLDR FUND I TE LP, HLDR FUND I UST LP, HALCYON VALLÉE BLANCHE MASTER FUND LP, BARDIN HILL EVENT-DRIVEN MASTER FUND LP, PRAETOR FUND I, A SUB FUND OF PRAETORIUM FUND I ICAV; HIRTLE CALLAGHAN TOTAL RETURN OFFSHORE FUND LIMITED; HIRTLE CALLAGHAN TOTAL RETURN OFFSHORE FUND II LIMITED; HIRTLE CALLAGHAN TRADING PARTNERS, L.P.; AND THIRD SERIES OF HDML FUND I LLC.,

Appellees.

**APPELLANTS' DESIGNATION OF RECORD AND STATEMENT OF
ISSUES ON APPEAL PURSUANT TO RULE 8009(A) OF
THE FEDERAL RULES OF BANKRUPTCY PROCEDURE²**

Pursuant to Rule 8009(a) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Rule 8009-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), Patriarch Partners VIII, LLC, Patriarch Partners XIV, LLC, Patriarch Partners XV, LLC, Octaluna, LLC, Octaluna II, LLC, Octaluna III, LLC, and Lynn Tilton (collectively, “Appellants”) hereby submit their designation of the record on appeal, together with all exhibits, attachments, and documents incorporated by reference therein, and statement of the issues on appeal in connection with their appeal from the *Memorandum Opinion and Order on Defendants’ Motions to Dismiss the Amended Complaint of Lynn Tilton and the Patriarch & Octaluna Entities for Equitable Subordination* [Adv. D.I. 236] (the “Order”).

² Capitalized terms not defined herein have the meanings ascribed to them in the Amended Complaint [Adv. D.I. 160] (“Am. Compl.”).

DESIGNATION OF THE RECORD ON APPEAL³

Adv. Docket No.	Date Filed	Description
64	10/30/2020	Motion to Dismiss Adversary Proceeding
65	10/30/2020	Memorandum of Law in Support of Defendant U.S. Bank National Association's Motion to Dismiss
81	10/30/2020	Motion to Dismiss Adversary Proceeding Filed by Alvarez & Marsal Zohar Management LLC
82	10/30/2020	Opening Memorandum of Law in Support of Defendant Alvarez & Marsal Zohar Management's Motion to Dismiss Complaint of Lynn Tilton and the Patriarch & Octaluna Entities
103	10/30/2020	Plaintiffs' Omnibus Opposition to Defendants' Motions to Dismiss the Complaint
110	03/02/2021	Memorandum of Law in Further Support of Defendant U.S. Bank National Association's Motion to Dismiss
111	03/02/2021	[Sealed] Reply in Support of Defendant Alvarez & Marsal Zohar Managements Motion to Dismiss Complaint of Lynn Tilton and the Patriarch & Octaluna Entities
125	07/29/2021	Letter from Theresa Trzaskoma to the Honorable Karen B. Owens regarding supplemental authority.
126	08/05/2021	Letter from Michael Petrella to Judge Owens dated 8/5/2021 in response to Patriarch's Letter dated 7/29/2021
127	10/20/2021	Letter from Michael Petrella to the Honorable Karen B. Owens regarding supplemental authority
128	10/20/2021	Letter to the Honorable Karen B. Owens regarding supplemental authority
129	10/21/2021	Letter to the Honorable Karen B. Owens regarding Supplemental Authority
132	10/26/2021	[Sealed] Letter from Theresa Trzaskoma to the Honorable Karen B. Owens regarding October 27, 2021 hearing
133	10/26/2021	Letter to Judge Owens from Michael E. Petrella dated October 26, 2021 re. Response to Patriarch's Letter
134	10/26/2021	Letter to the Honorable Karen B. Owens in Response to Patriarchs Letter
137	10/29/2021	Letter from Theresa Trzaskoma to the Honorable Karen B. Owens regarding October 27, 2021 hearing
160	01/06/2022	[Sealed] Amended Complaint to Modify Nature of Suit
167	01/28/2022	Supplemental Memorandum of Law in Further Support of Alvarez & Marsal Zohar Managements Motion to Dismiss the Complaint of Lynn Tilton and the Patriarch & Octaluna Entities.
168	01/28/2022	[Sealed] Memorandum of Law of Zohar III Controlling Class in Support of their Motion to Dismiss the Amended Complaint under Federal Rule of Civil Procedure 12(b)(6) Made Applicable by Bankruptcy Rule 7012

³ Portions of the record designated for appeal were filed or admitted under seal. Contemporaneously with the filing of this designation Appellant will file a motion with the District Court pursuant to Bankruptcy Rule 8009(f) requesting that the District Court accept these portions of the record under seal.

Adv. Docket No.	Date Filed	Description
169	01/28/2022	[Sealed] Motion to Dismiss Adversary Proceeding
170	01/28/2022	[Sealed] Declaration in Support of Michael E. Petrella Regarding Defendants MBIA Inc.'s and MBIA Insurance Corporation's Motion to Dismiss Equitable Subordination Complaint
192	02/17/2022	[Sealed] Plaintiffs' Omnibus Opposition to Defendants' Motions to Dismiss the Amended Complaint
205	02/24/2022	[Sealed] Reply Memorandum of Law of the Zohar III Controlling Class in Further Support of their Motion to Dismiss the Amended Complaint
206	02/24/2022	[Sealed] Reply /Defendants MBIA Inc.'s and MBIA Insurance Corporation's Reply Memorandum of Law in Further Support of Their Motion to Dismiss Equitable Subordination Amended Complaint
207	02/24/2022	Limited Supplemental Reply Brief in Support of Defendant Alvarez & Marsal Zohar Managements Motion to Dismiss Complaint of Lynn Tilton and the Patriarch & Octaluna Entities
215	03/01/2022	Notice of Agenda of Matters Scheduled for Hearing on March 3, 2022 at 1:00 p.m. (ET)
233	03/24/2022	[Sealed] Amended Complaint to Modify Nature of Suit
236	03/25/2022	Memorandum Opinion and Order on Defendants Motions to Dismiss the Amended Complaint of Lynn Tilton and The Patriarch & Octaluna Entities for Equitable Subordination
237	03/29/2022	Notice of Appeal Civil Action Number: 22-400 ; BAP Number: 22-29
Docket	10/01/2019 to 04/12/2022	Docket in Adversary Proceeding No. 19-50390 (KBO) (Bankr. D. Del.)

Bankr. Docket No.	Date Filed	Description
3133	03/04/2022	Transcript regarding Hearing Held 03/03/22 RE: Oral Argument

STATEMENT OF THE ISSUES ON APPEAL

Appellants hereby state the following as the issues on appeal pursuant to Bankruptcy Rule 8009(a)(1)(A):

1. Did the Bankruptcy Court err in finding that Appellants failed to state a claim, including by not drawing all reasonable inferences in Appellants' favor?
2. Did the Bankruptcy Court err in holding that the doctrine of collateral estoppel barred the Amended Complaint's allegations that Appellees behaved inequitably?
3. Did the Bankruptcy Court err in holding that Appellants failed to sufficiently allege that Appellees' conduct with regard to the auction of the Zohar I collateral amounted to inequitable conduct justifying subordination?
4. Did the Bankruptcy Court err in holding that Appellants failed to sufficiently allege that Appellees acted with an improper purpose that amounted to inequitable conduct justifying subordination?
5. Did the Bankruptcy Court err in holding that Appellants failed to sufficiently allege that Appellee U.S. Bank National Association was an insider of the Debtors?

Dated: April 12, 2022
Wilmington, Delaware

COLE SCHOTZ P.C.

By: /s/ G. David Dean
Norman L. Pernick (No. 2290)
G. David Dean (No. 6403)
Patrick J. Reilley (No. 4451)
500 Delaware Avenue, Suite 1410
Wilmington, DE 19801
Telephone: (302) 652-3131
Facsimile: (302) 652-3117
npernick@coleschotz.com
ddean@coleschotz.com
preilley@coleschotz.com

– and –

SHER TREMONTE LLP

Theresa Trzaskoma
(Admission Pro Hac Vice pending)
Maya Brodziak
(Admission Pro Hac Vice pending)
90 Broad Street, 23rd Floor
New York, New York 10004
Telephone: (212) 202-2600
Facsimile: (212) 202-4156
ttrzaskoma@shertremonte.com

Counsel to Appellants